

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

UNITED STATES OF AMERICA

V.

CAUSE NO. 3:14CR088-M-A

BOBBY ALLEN OSBORNE

NOTICE REQUESTING INTENT TO USE OTHER CRIMES, WRONGS OR ACTS
EVIDENCE AND MEMORANDUM IN SUPPORT

Defendant, Bobby Allen Osborne, by and through counsel, hereby requests the Government, pursuant to Federal Rule of Criminal Procedure 12(b)(2), Federal Rules of Evidence 104 (a) and (c), and Federal Rule of Evidence 404(b), to give notice of at least two weeks prior to trial of its intention to introduce as evidence at trial for any purpose including rebuttal, cross-examination, or impeachment, and would respectfully show as follows:

1. Defendant is hereby providing notice of the request required under Rule 404(b) of the Federal Rules of Evidence, for disclosure of evidence of "other crimes, wrongs, or acts" of the Defendant as that phrase is used in 404(b), including the issue or issues on which the prosecution believes such evidence is relevant within the scope and meaning of said rule.

2. Rule 404(b) of the Federal Rules of Evidence states:

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or

lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial – or during trial if the court, for good cause, excuses lack of pretrial notice.

3. Evidence of "other crimes, wrongs or acts" includes, but is not limited to, any and all records and information revealing prior felony convictions, guilty verdicts, or juvenile adjudications attributed to Defendant as well as any relevant state and/or federal "rap" sheets.

4. The 1991 Amendment to Rule 404(b) requires the prosecution to provide notice regardless of how it intends to use the evidence, i.e., during its case-in-chief, for impeachment, or for possible rebuttal. It also notes that the notice requirement serves as a condition precedent to admissibility of the same, and that the offered evidence is inadmissible if the Court decides the notice requirement has not been met.

5. Defendant respectfully submits that at least two weeks' notice in advance of trial is necessary in order to: (1) avoid unfair surprise; (2) give the Defendant an adequate opportunity to investigate the facts of such allegedly similar acts or wrongs; (3) allow the Defendant to prepare appropriate motions *in limine* and those required under F.R.Crim.P. 12(b)(2) and (b)(3); and (4) allow for adequate consideration of facts and circumstances prior to expiration of the plea agreement deadline.

6. The information sought is not subject to disclosure under Fed. R. Crim. P. 16, and cannot be legitimately deemed a request for discovery. No provision under Rule 16 or the 18 U.S.C. §3500 addresses or requires the production of this information. It is only required by Rule 404(b).

REQUESTED RELIEF

Defendant, Bobby Allen Osborne, respectfully requests as set forth herein that the prosecution notify the defense at least two weeks prior to trial of what evidence it will seek to introduce pursuant to F.R.E. 404(b).

Respectfully submitted,

BOBBY ALLEN OSBORNE

/s/ Gregory S. Park

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CERTIFICATE OF SERVICE

I, Gregory S. Park, attorney for Defendant, Bobby Allen Osborne, do hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that the following party will be notified electronically of filing:

Hon. Clay Joyner, AUSA

clay.joyner@usdoj.gov

Dated, this the 30th day of July, 2014.

/s/ Gregory S. Park

GREGORY S. PARK

Assistant Federal Public Defender